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PCB HCR 06-04

1 A bill to be entitled

2 An act relating to medical records; amending s. 456.057,
3 F.S.; providing definitions; requiring a health care
4 practitioner's employer who is a records owner and a
5 records custodian to comply with specified requirements
6 for confidentiality and disclosure; amending s. 456.42,
7 F.S.; providing requirements for prescriptions of
8 medicinal drugs by health care practitioners that are
9 electronically generated and transmitted; creating s.
10 456.43, F.S.; regulating electronic prescribing for
11 medicinal drugs; providing restrictions for electronic
12 prescribing software; providing definitions; authorizing
13 electronic prescribing software to show information
14 regarding a payor's formulary under certain circumstances;
15 amending s. 465.025, F.S.; specifying requirements for a
16 prescriber to prevent generic substitution for brand name
17 drugs when a prescription is electronically transmitted
18 and generated; amending s. 381.028, F.S.; correcting a
19 cross-reference; providing an effective date.

20
21 Be It Enacted by the Legislature of the State of Florida:

22
23 Section 1. Present subsections (3) through (19) of section
24 456.057, Florida Statutes, are renumbered as subsections (5)
25 through (21), respectively, and new subsections (3) and (4) are
26 added to that section to read:

27 456.057 Ownership and control of patient records; report or
28 copies of records to be furnished.--

29 (3) As used in this section, the term "records custodian"

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means any person or entity that:

(a) Maintains documents that are authorized in subsection (2); or

(b) Obtains medical records from a records owner.

(4) Any health care practitioner's employer who is a records owner and any records custodian shall maintain records or documents as provided under the confidentiality and disclosure requirements of this section.

Section 2. Section 456.42, Florida Statutes, is amended to read:

456.42 Written prescriptions for medicinal drugs.--A written prescription for a medicinal drug issued by a health care practitioner licensed by law to prescribe such drug must be legibly printed or typed so as to be capable of being understood by the pharmacist filling the prescription; must contain the name of the prescribing practitioner, the name and strength of the drug prescribed, the quantity of the drug prescribed in both textual and numerical formats, and the directions for use of the drug; must be dated with the month written out in textual letters; and must be signed by the prescribing practitioner on the day when issued. However, a prescription that is electronically generated and transmitted must contain the name of the prescribing practitioner, the name and strength of the drug prescribed, the quantity of the drug prescribed in numerical format, and the directions for use of the drug and must be dated and signed by the prescribing practitioner only on the day issued, which signature may be in an electronic format as defined by s. 668.003(4).

Section 3. Section 456.43, Florida Statutes, is created to

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59 read:

60 456.43 Electronic prescribing for medicinal drugs.--

61 (1) Electronic prescribing shall not interfere with a
62 patient's freedom to choose a pharmacy.

63 (2) Electronic prescribing software shall not use any means
64 or permit any other person to use any means, including, but not
65 limited to, advertising, instant messaging, and pop-up ads, to
66 influence or attempt to influence, through economic incentives or
67 otherwise, the prescribing decision of a physician at the point
68 of care. Such means shall not be triggered or in specific
69 response to the input, selection, or act of a physician or his or
70 her agent in prescribing a certain pharmaceutical or directing a
71 patient to a certain pharmacy.

72 (a) The term "prescribing decision" means a physician's
73 decision to prescribe a certain pharmaceutical or direct a
74 patient to a certain pharmacy.

75 (b) The term "point of care" means the time that a
76 physician or his or her agent is in the act of prescribing a
77 certain pharmaceutical or directing a patient to a certain
78 pharmacy.

79 (3) Electronic prescribing software may show information
80 regarding a payor's formulary as long as nothing is designed to
81 preclude or make more difficult the act of a physician or patient
82 selecting any particular pharmacy or pharmaceutical.

83 Section 4. Subsection (2) of section 465.025, Florida
84 Statutes, is amended to read:

85 465.025 Substitution of drugs.--

86 (2) A pharmacist who receives a prescription for a brand
87 name drug shall, unless requested otherwise by the purchaser,

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88 substitute a less expensive, generically equivalent drug product
89 that is:

90 (a) Distributed by a business entity doing business, and
91 subject to suit and service of legal process, in the United
92 States; and

93 (b) Listed in the formulary of generic and brand name drug
94 products as provided in subsection (5) for the brand name drug
95 prescribed,

96
97 unless the prescriber writes the words "MEDICALLY NECESSARY," in
98 her or his own handwriting, on the face of a written
99 prescription; ~~or~~ unless, in the case of an oral prescription, the
100 prescriber expressly indicates to the pharmacist that the brand
101 name drug prescribed is medically necessary; or unless, in the
102 case of a prescription that is electronically generated and
103 transmitted, the prescriber makes an overt act when transmitting
104 the prescription to indicate that the brand name drug prescribed
105 is medically necessary. When done in conjunction with the
106 electronic transmission of the prescription, the prescriber's
107 overt act indicates to the pharmacist that the brand name drug
108 prescribed is medically necessary.

109 Section 5. Paragraph (c) of subsection (7) of section
110 381.028, Florida Statutes, is amended to read:

111 381.028 Adverse medical incidents.--

112 (7) PRODUCTION OF RECORDS.--

113 (c)1. Fees charged by a health care facility for copies of
114 records requested by a patient under s. 25, Art. X of the State
115 Constitution may not exceed the reasonable and actual cost of
116 complying with the request, including a reasonable charge for the

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117 staff time necessary to search for records and prevent the
118 disclosure of the identity of any patient involved in the adverse
119 medical incident through redaction or other means as required by
120 the Health Insurance Portability and Accountability Act of 1996
121 or its implementing regulations. The health care facility may
122 require payment, in full or in part, before acting on the records
123 request.

124 2. Fees charged by a health care provider for copies of
125 records requested by a patient under s. 25, Art. X of the State
126 Constitution may not exceed the amount established under s.
127 456.057(18)~~(16)~~, which may include a reasonable charge for the
128 staff time necessary to prevent the disclosure of the identity of
129 any patient involved in the adverse medical incident through
130 redaction or other means as required by the Health Insurance
131 Portability and Accountability Act of 1996 or its implementing
132 regulations. The health care provider may require payment, in
133 full or in part, before acting on the records request.

134 Section 6. This act shall take effect July 1, 2006.